COLUMBIA LAW REVIEW.

Published monthly during the Academic Year by Columbia Law Students.

SUBSCRIPTION PRICE, $2.00 PER ANNUM. 30 CENTS PER NUMBER.

NOTES.

THADDEUS D. KENNESON comes to the School this fall as Lecturer in Evidence, and as one of its contributors in the past the REVIEW takes especial pleasure in welcoming him. He fills the vacancy caused by the resignation of FRANCIS C. HUNTINGTON, who retires to engage exclusively in active practice.

THE LEGAL EFFECT OF A SAVINGS BANK DEPOSIT IN TRUST.—The New York Court of Appeals seems to have taken a position in the law of trusts long ago declared unsound in England, and which finds support only in Massachusetts. In In re *Totten* (1904) 71 N. E. 748, it declares that a deposit by one person in a savings bank as trustee for another establishes, not an irrevocable trust, but "a tentative trust merely, revocable at will, until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration, such as delivery of the pass book or notice to the beneficiary. In case the depositor dies before the beneficiary, without revocation or some decisive act or declaration of disaffirmance, the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor." This language is capable of the construction that the unequivocal statement which accompanies a deposit is evidence which requires corroboration to establish a trust, or which may be overcome by showing that the settlor subsequently withdrew the deposit. It is well established that evidence can be introduced to show that no trust was ever intended, that the declaration of trust was designed to evade the savings bank by-laws, or for some other purpose, *Matter of Barefield* (1904) 177 N. Y. 387; *Milholland* v. *Whilen* (1899) 89 Md. 212; but it is very doubtful if the custom of evading savings bank by-laws in this manner is so common that the explicit words of trust are robbed of their usual import, and the court is not convincing in its contention that this proof must be corroborated, rather than explained away, before that intention can be

inferred. Neither, it would seem, can the inference raised by those words be overcome by evidence that the settlor subsequently withdrew the deposit, for, as Judge Andrews pointed out in *Mabie* v. *Bailey* (1884) 95 N. Y. 206, "The fact that deposits were subsequently drawn out is not legitimate evidence that he did not intend, when the deposits were made, to create a beneficial trust for the beneficiaries named." But this question of evidence seems not to be the basis on which the court rests its decision; the phrases "tentative trust." "revocable at will," "absolute trust as to the balance," and "declaration of disaffirmance," seem to indicate that the holding is that the trust was properly established, but that it might be revoked. In this the court seems to have gone back a hundred years.

In *Ex parte Pye* (1811) 18 Ves. 139, the English court decided that a gratuitous declaration of trust was binding, and this is now generally admitted to be the law, Lewin on Trusts, 9th ed., 66 and 69; Perry on Trusts, 4th ed., § 96. The only requisites for the creation of such a trust are an intention on the part of the settlor to make a trust and some act to carry out this intention, as, for instance, an unequivocal statement, *Martin* v. *Funk* (1878) 75 N. Y. 134; *Minor* v. *Rogers* (1873) 40 Conn. 512; and while in the proof of the fact of that intention it might be pertinent to show that notice was given to the beneficiary, the notice is not a component part of the trust, and failing to give it will not affect the validity of the trust, *Fletcher* v. *Fletcher* (1844) 4 Hare 67; *Martin* v. *Funk*, supra. Unlike the gift of a chattel, which requires that title be passed, under a gratuitous declaration of trust the title remains in the settlor, and the trust derives its validity solely from the act and intention of the settlor; the beneficiary's interest is then created, and once created equity should protect it, as it would any other vested right, not only from a stranger but from the settlor himself, *Viney* v. *Abbott* (1872) 109 Mass. 300; *Mabie* v. *Bailey*, supra. The court distinguishes savings bank trusts from others, but there seems to be no reason why the cestui under such a trust should not receive the same protection that he would under a trust in any other bank, nor is it clear why the declarations which would establish a trust in another bank will fail when used in a savings bank. The case seems hard to reconcile with the reasoning of the earlier New York cases mentioned by the court, and the principles laid down in the cases from other jurisdictions seem clearly opposed to the holding. While it happens that usually some one of the requirements enumerated by the New York court is found, the presence of such a fact seems never to have had a determining influence and there seems to be no good reason why it should have. *Sayer* v. *Weil* (Ala. 1892) 15 L. R. A. 545; *Richardson* v. *Richardson* (1867) L. R. Eq. Cas. 686.

ACTIONS ACCRUING UNDER FOREIGN STATUTES.—The authorities collected in the recent case of *Slater* v. *Mexican Nat. R. Co.* (1904) 194 U. S. 120, indicate that there is much confusion as to the principles which should govern the courts of one state when considering an action which accrued under the statute of another state. In that case the plaintiff's intestate was killed in Mexico, where a statute providing for a right of action gave damages in the form of a pension.